

Office of the Secretary, HUD

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§ 15.305 Legal proceedings among private litigants; expert or opinion testimony.

If, while testifying in a legal proceeding exclusively among private litigants, an employee of the Department is asked for expert or opinion testimony, the employee shall decline to answer on the grounds that he or she is forbidden to do so by this part.

APPENDIX A TO PART 15—HUD FOIA READING ROOMS

The Department maintains a reading room in Headquarters, 451 Seventh Street, SW., Washington, DC 20410 and in each of its Secretary's Representative's Offices as follows:

New England, Boston Office—Room 375, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, Massachusetts 02222-1092. The New England Office oversees jurisdiction for HUD Offices located in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, and Rhode Island.

New York/New Jersey, New York Office—26 Federal Plaza, New York, New York 10278-0068. The New York/New Jersey Office oversees jurisdiction for HUD Offices located in New York and New Jersey.

Mid Atlantic, Philadelphia Office—Liberty Square Building, 105 South 7th Street, Philadelphia, Pennsylvania 19106-3392. The Mid Atlantic Office oversees jurisdiction for HUD Offices located in Pennsylvania, Delaware, Maryland, Virginia, and West Virginia.

Southeast/Caribbean, Atlanta Office—Five Points Plaza Building, 40 Marietta St., Atlanta, Georgia 30303. The Southeast/Caribbean Office oversees jurisdiction for HUD Offices located in Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Florida, and Puerto Rico.

Midwest, Chicago Office—Ralph Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604-3507. The Midwest Office oversees jurisdiction for HUD Offices located in Illinois, Indiana, Ohio, Michigan, Wisconsin, and Minnesota.

Southwest, Fort Worth Office—Burnett Plaza Building, 801 Cherry Street, Fort Worth, Texas 76102. The Southwest Office oversees jurisdiction for HUD Offices located in Oklahoma, Texas, Arkansas, Louisiana, and New Mexico.

Great Plains, Kansas City Office—Room 200, Gateway Tower II, 400 State Avenue, Kansas City, Kansas 66101-2406. The Great Plains Office oversees jurisdiction for HUD Offices located in Missouri, Iowa, Kansas, and Nebraska.

Rocky Mountain, Denver Office—633 17th Street, Denver, Colorado 80202-3607. The Rocky Mountain Office oversees jurisdiction for HUD Offices located in Colorado, Utah,

Wyoming, North Dakota, South Dakota, and Montana.

Pacific/Hawaii, San Francisco Office—Philip Burton Federal Building & U.S. Courthouse, 450 Golden Gate Avenue, PO Box 36003, San Francisco, California 94102-3448. The Pacific/Hawaii Office oversees jurisdiction for HUD Offices located in California, Nevada, Arizona, and Hawaii.

Northwest/Alaska, Seattle Office—Suite 200, Seattle Federal Office Building, 909 First Avenue, Seattle, Washington 98104-1000. The Northwest/Alaska Office oversees jurisdiction for HUD Offices located in Alaska, Washington, Oregon, and Idaho.

[66 FR 6973, Jan. 22, 2001]

PART 16—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

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AUTHORITY: 5 U.S.C. 552(a); 42 U.S.C. 3535(d).

SOURCE: 40 FR 39729, Aug. 28, 1975, unless otherwise noted.

§ 16.1 Purpose and statement of policy.

(a) The purpose of this part is to establish policies and procedures for implementing the Privacy Act of 1974 (Pub. L. 93-579), 5 U.S.C. 552(a). The main objectives are to facilitate full exercise of rights conferred on individuals under the Act and to insure the protection of privacy as to individuals about whom the Department maintains records in systems of records under the Act. The Department accepts the responsibility to act promptly and in accordance with the Act upon receipt of any inquiry, request or appeal from a

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citizen of the United States or an alien lawfully admitted for permanent residence into the United States, regardless of the age of the individual.

(b) Further, the Department accepts the obligations to maintain only such information on individuals as is relevant and necessary to the performance of its lawful functions, to maintain that information with such accuracy, relevancy, timeliness and completeness as is reasonably necessary to assure fairness in determinations made by the Department about the individual, to obtain information from the individual to the extent practicable, and to take every reasonable step to protect that information from unwarranted disclosure. The Department will maintain no record describing how an individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.

(c) This part applies to all organizational components in the Department in order to assure the maximum amount of uniformity and consistency within the Department in its implementation of the Act.

(d) The Assistant Secretary for Administration shall be responsible for carrying out the requirements of this part, for issuing such orders and directives internal to the Department as are necessary for full compliance with the Act, and for effecting publication of all required notices concerning systems of records.

(e) Requests involving information pertaining to an individual which is in a record or file but not within the scope of a System of Records Notice published in the FEDERAL REGISTER are outside the scope of this part. Requests for departmental records will be considered to determine whether processing under this part, part 15, or both is most appropriate, notwithstanding the requester's characterization of the request, as follows:

(1) *A Privacy Act request from an individual for records about that individual and not contained in a Privacy Act Records System* shall be considered a Freedom of Information Act request

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and processed under HUD Freedom of Information Act regulations (24 CFR part 15) to the extent that the requester has provided the Department a reasonable description of the documents requested. When a request for records is so considered as a Freedom of Information Act request, the Privacy Act Officer shall promptly refer it to the head of the appropriate organizational unit in accordance with HUD FOIA Regulations and shall advise the requester that time of receipt for processing purposes will be the time when it is received by the appropriate official.

(2) *A Freedom of Information Act request from an individual for records about that individual contained in a Privacy Act Records System* shall be processed as follows:

(i) If the request in whole or in part contains a reasonable description of any HUD document, processing shall be carried out pursuant to HUD FOIA Regulations.

(ii) If the request in whole or in part does not contain a reasonable description of any HUD document, but does provide sufficient information under HUD Privacy Act Regulations to undertake a Privacy Act Records System search, the Department will provide full access under HUD Privacy Act Regulations. In this situation, the Department will comply with the deadlines for response set forth in the Privacy Act and HUD implementing regulations. In that event, an explanation will be provided to the requester advising that the request did not contain a reasonable description of a particular document as required under the FOIA and offering to process the request under FOIA procedures upon receipt of additional information sufficient to constitute a *reasonable description*.

(3) *A Freedom of Information Act request from an individual for records about another individual contained in a Privacy Act Records System* shall be processed as follows: When an exemption under subsection (b) of FOIA is available, the Privacy Act governs the public interest determination under HUD FOIA Regulations (24 CFR 15.21) and compels the withholding of such documents unless: (i) The subject of those records consents to their release or (ii) disclosure

comes within one of the subsections of 5 U.S.C. § 552a(b).

(4) A *Privacy Act request from an individual for records about another individual* shall be processed as follows: Except as expressly permitted in this part, requests by persons who are not the subject of a record contained in a Privacy Act Records System shall be outside the scope of this part. If the request satisfies the Freedom of Information Act requirement that requested records be reasonably described, the Privacy Act Officer shall consider the requests as a Freedom of Information Act request and shall proceed as in § 16.1(e)(1) of this section.

[40 FR 39729, Aug. 28, 1975, as amended at 41 FR 13917, Apr. 1, 1976]

§ 16.2 Definitions.

(a) The definitions of 5 U.S.C. 552a apply in this part.

(b) As used in this part:

(1) *Act* means the *Privacy Act of 1974*, Pub. L. 93-579.

(2) *Privacy Act Officer* means those officials, identified in Appendix A to this part, or their designees, who are authorized to receive and act upon inquiries, requests for access, and requests for correction or amendment.

(3) *Privacy Appeals Officer* means the General Counsel.

(4) *Inquiry* means a request by an individual that the Department determine whether it has any record in a system of records which pertains to that individual.

(5) *Request for access* means a request by an individual or guardian to inspect and/or copy and/or obtain a copy of a record which is in a particular system of records and which pertains to that individual.

(6) *Request for correction or amendment* means the request by an individual or guardian that the Department change (either by correction, addition or deletion) a particular record in a system of records which pertains to that individual.

(7) *Appeal* means the request by an individual that an initial denial of a request for access or correction or amendment by that individual be reviewed and reversed.

[40 FR 39729, Aug. 28, 1975, as amended at 41 FR 13917, Apr. 1, 1976; 61 FR 5204, Feb. 9, 1996]

§ 16.3 Procedures for inquiries.

(a) Any individual, regardless of age, may submit an inquiry to the Department. The inquiry should be made either in person at the office of, or by mail addressed to, the appropriate Privacy Act Officer. Although oral requests may be honored, a requester may be asked to submit his request in writing. The envelope containing the request and the letter itself should both clearly indicate that the subject is a "PRIVACY ACT INQUIRY". If an individual believes the Department maintains a record pertaining to that individual but does not know which system of records might contain such a record and/or which organizational component of the Department maintains the system of records, assistance in person or by mail will be provided at the first address listed in Appendix A to this part.

(b)(1) An inquiry should contain the following information:

(i) Name, address and telephone number of the individual making the request;

(ii) Name, address and telephone number of the individual to whom the record pertains, if the requesting individual is either the parent of a minor or the legal guardian of the individual to whom the record pertains;

(iii) A certified or authenticated copy of documents establishing parentage or guardianship;

(iv) Whether the individual to whom the record pertains is a citizen of the United States or an alien lawfully admitted for permanent residence in to the United States;

(v) Name of the system of records, as published in the FEDERAL REGISTER;

(vi) Location of the system of records, as published in the FEDERAL REGISTER;

(vii) Such additional information as the individual knows will or believes might assist the Department in responding to the inquiry (for example, the individual's past or present relationship with the Department, e.g. mortgagor, contractor, employee, including relevant dates) and in verifying the individual's identity (for example, date of birth, place of birth, names of parents, place of work, dates of employment, position title, etc.);

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- (viii) Date of inquiry; and,
- (ix) Individual's signature.

The Department reserves the right to require compliance with the identification procedures appearing at §16.4(d) where circumstances warrant.

(2) In compliance with 5 U.S.C. 552a (e)(3) each individual supplying the information in accordance with paragraph (b)(1) of this section hereby is informed that:

(i) The authority authorizing solicitation of the information is 5 U.S.C. 552a, disclosure is voluntary, and no penalty is attached for failure to respond;

(ii) The principal purpose for which the information is intended to be used is processing the inquiry under the Act;

(iii) The routine uses which may be made of the information are the routine uses appearing as a prefatory statement to the Department's notice of systems of records published in the FEDERAL REGISTER; and,

(iv) The effects of not providing all or any part of the information may delay, or in some cases make impossible, the Department's processing of the action on the request under the Act.

(3) If, having been made aware of the contents of paragraph (b)(2) of this section, an individual submits the information listed in paragraph (b)(1) of this section, he or she will be deemed to have made the submission on a purely voluntary and consensual basis.

(c) When an inquiry is misdirected by the requester, or not addressed as specified in paragraph (a) of this section, the Department official receiving same shall make reasonable effort to identify, and promptly refer it to, the appropriate Privacy Act Officer and the time of receipt for processing purposes will be the time when it is received by the Privacy Act Officer.

(d) When an inquiry fails to provide necessary information as set forth in paragraph (b) of this section, the requester shall be advised that the time of receipt for processing purposes will be the time when the additional necessary information is received by the Privacy Act Officer.

(e) Each inquiry received shall be acted upon promptly by the responsible Privacy Act Officer. Every effort will

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be made to respond within ten days (excluding Saturdays, Sundays and holidays) of the date of receipt. If a response cannot be made within ten days, the Privacy Act Officer shall send an acknowledgement during that period providing information on the status of the inquiry. The Privacy Act Officer may indicate that additional information would facilitate processing or that further information is necessary to process the inquiry.

§ 16.4 Requests for access; requirements.

(a) Any individual, regardless of age, may submit to the Department a request for access to records of the Department. The request should be made either in person at the Office of, or by mail addressed to, the responsible Privacy Act Officer identified in Appendix A to this part. Although oral requests may be honored, a requester may be asked to submit his request in writing. The envelope containing the request and the letter itself should both clearly indicate that the subject is a PRIVACY ACT REQUEST FOR ACCESS TO RECORDS.

(b) When a request for access to records is misdirected by the requester, or not addressed as specified in paragraph (a) of this section, the Department official receiving same shall promptly refer it to the appropriate Privacy Act Officer and the time of receipt for processing purposes will be the time when it is received by that official.

(c) When a request for access to records fails to provide necessary information as set forth in paragraph (b) of this section the requester shall be advised that the time of receipt for processing purposes will be the time when the additional necessary information is received by the appropriate official.

(d) The requirements for identification of individuals seeking access to records are as follows:

(1) *In person.* Each individual making a request in person shall be required to present satisfactory proof of identity. The means of proof, in the order of preference and priority, are:

(i) A document bearing the individual's photograph (for example, passport

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or military or civilian identification card);

(ii) A document bearing the individual's signature (for example, driver's license, social security card, unemployment insurance book, employer's identification card, national credit card and professional, craft or union membership card); and

(iii) A document bearing neither the photograph nor the signature of the individual (for example, a Medicaid card). In the event the individual can provide no suitable documentation of identity, the Department will require a signed statement asserting the individual's identity and stipulating that the individual understands the penalty provision of 5 U.S.C. 552a(i)(3). That penalty provision also appears at §16.13(a). In order to avoid any unwarranted disclosure of an individual's records, the Department reserves the right to determine to its satisfaction whether proof of identity offered by any individual is adequate.

(2) *Not in person.* If the individual making a request does not appear in person before a Privacy Act Officer, the information set forth in §16.3(b)(1) and a certificate of a notary public or equivalent officer empowered to administer oaths must accompany the request. The certificate within or attached to the letter must be substantially in accord with the following text:

City of _____
County of _____:

ss _____ (name of individual),
who affixed (his) (her) signature below in my
presence, came before me, a _____
(title), in and for the aforesaid County and
State, this _____ day of _____,
19____, and established (his) (her) identity to
my satisfaction.
My _____ commission _____ expires _____

(signature)

If the request follows inquiry under §16.3, this should be indicated in the request for access in order to facilitate processing.

(3) *Parents of minors and legal guardians.* An individual acting as the parent of a minor or the legal guardian of the individual to whom a record pertains

shall establish his or her personal identity in the same manner prescribed in either paragraph (d) (1) or (2) of this section. In addition, such other individual shall establish his or her representative capacity of parent or legal guardian. In the case of the parent of a minor, the proof of identity shall be a certified or authenticated copy of the minor's birth certificate. In the case of a legal guardian of an individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, the proof of identity shall be a certified or authenticated copy of the court's order. A parent or legal guardian may act only for a living individual, not for a decedent. A parent or legal guardian may be accompanied during personal access to a record by another individual, provided the provisions of §16.5(e) are satisfied.

(e) When the provisions of this part are alleged to have the effect of impeding an individual in exercising his or her right to access, the Department will consider alternative suggestions from an individual making a request, regarding proof of identity and access to records.

(f) An individual shall not be required to state a reason or otherwise justify his or her request for access to a record.

§ 16.5 Disclosure of requested information to individuals.

(a) Each request received shall be acted upon promptly by the responsible Privacy Act Officer. Every effort will be made to respond within ten days (excluding Saturdays, Sundays and holidays) of the date of receipt. If a response cannot be made within ten days due to unusual circumstances, the Privacy Act Officer shall send an acknowledgement during that period providing information on the status of the request and asking for such further information as may be necessary to process the request. *Unusual circumstances* shall include circumstances where a search for and collection of requested records from inactive storage, field facilities or other establishments are required, cases where a voluminous amount of data is involved, instances where information on other individuals must be

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separated or expunged from the particular record, and cases where consultations with other agencies having a substantial interest in the determination of the request are necessary.

(b) *Grant of access*—(1) *Notification*. An individual shall be granted access to a record pertaining to him or her, except where the provisions of § 16.6 apply. The Privacy Act Officer shall notify the individual of such determination and provide the following information:

(i) The methods of access, as set forth in paragraph (b)(2) of this section;

(ii) The place at which the record may be inspected;

(iii) The earliest date on which the record may be inspected and the period of time that the records will remain available for inspection and/or the estimated date by which a copy of the record could be mailed and the estimate of fees pursuant to § 16.12;

(iv) The fact that the individual, if he or she wishes, may be accompanied by another individual during personal access, subject to procedures set forth in paragraph (e) of this section; and

(v) Any additional requirements needed to grant access to a specific record.

(2) *Methods of access*. The following methods of access to records by an individual may be available depending on the circumstances of a given situation:

(i) Inspection in person may be had in the office specified by the Privacy Act Officer granting access during hours indicated by the Privacy Act Officer;

(ii) Transfer of records to a Federal facility more convenient to the individual may be arranged, but only if the Privacy Act Officer determines that a suitable facility is available, that the individual's access can be properly supervised at the facility, and that transmittal of the records to that facility will not unduly interfere with operations of the Department or involve unreasonable costs, in terms of both money and manpower; and

(iii) Copies may be mailed at the request of the individual, subject to payment of the fees prescribed in § 16.12. The Department, at its own initiative, may elect to provide a copy by mail, in which case no fee will be charged the individual.

(c) The Department shall supply such other information and assistance at the time of access as to make the record intelligible to the individual.

(d) The Department reserves the right to limit access to copies and abstracts of original records, rather than the original records. This election would be appropriate, for example, when the record is in an automated data media such as tape or disc, when the record contains information on other individuals, and when deletion of information is permissible under exemptions (for example, 5 U.S.C. 552a(k)(2)). In no event shall original records of the Department be made available to the individual except under the immediate supervision of the Privacy Act Officer or his designee. It is a crime to conceal, mutilate, obliterate, or destroy any record filed in a public office, or to attempt to do any of the foregoing, Title 18, United States Code, 2701(a).

(e) Any individual who requests access to a record pertaining to that individual may be accompanied by another individual of his or her choice. *Accompanied* includes discussion of the record in the presence of the other individual. The individual to whom the record pertains shall authorize the presence of the other individual by a signed and dated document which includes the name of the other individual and specifically describes the record to which access is sought. The other individual shall sign the authorization in the presence of the Privacy Act Officer. An individual shall not be required to state a reason or otherwise justify his or her decision to be accompanied by another individual during personal access to a record.

§ 16.6 Initial denial of access.

(a) *Grounds*. Access by an individual to a record which pertains to that individual will be denied only upon a determination by the Privacy Act Officer that:

(1) The record is subject to an exemption under § 16.14, § 16.15 or to an exemption determined by another agency noticing the system of records;

(2) The record is information compiled in reasonable anticipation of a civil action or proceeding; or

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(3) The individual unreasonably has failed to comply with the procedural requirements of this part.

(b) *Notification.* The Privacy Act Officer shall give notice of denial of access to records to the individual in writing and shall include the following information:

(1) The Privacy Act Officer's name and title or position;

(2) The date of the denial;

(3) The reasons for the denial, including citation to the appropriate section of the Act and/or this part;

(4) The individual's opportunities, if any, for further administrative consideration, including the identity and address of the appropriate Privacy Appeals Officer. If no further administrative consideration within the Department is available, the notice shall state that the denial is administratively final; and,

(5) If stated to be administratively final; and, within the Department, the individual's right to judicial review under 5 U.S.C. 552a(g)(1), as amended by 5 U.S.C. 552a(g)(5).

[40 FR 39729, Aug. 28, 1975, as amended at 42 FR 20297, Apr. 19, 1977]

§ 16.7 Administrative review of initial denial of access.

(a) Review shall be available only from a written denial of a request for access issued under § 16.6(a) (2) or (3) and only if a written request for review is filed within thirty calendar days after the issuance of the written denial.

(b) A request for review shall be addressed to the Privacy Appeals Officer identified in the initial denial, which official is authorized to make final determinations. The envelope containing the request for review and the letter itself should both clearly indicate that the subject is a PRIVACY ACT REQUEST FOR REVIEW.

(c) When a request for review is misdirected by the requester, or not addressed as specified in paragraph (b) of this section, the Department official receiving same shall promptly refer it to the Privacy Appeals Officer and the time of receipt for processing purposes will be the time when it is received by the appropriate official.

(d) When a request for review fails to provide necessary information as set forth in paragraph (e) of this section, the requester shall be given reasonable opportunity to amend the request and shall be advised that the time of receipt for processing purposes will be the time when the additional necessary information is received by the appropriate official.

(e) The filing of a request for review may be accomplished by mailing to the Privacy Appeals Officer a copy of the request for access, if in writing; a copy of the written denial issued under § 16.6; and a statement of the reasons why the initial denial is believed to be in error. The appeal shall be signed by the individual.

(f) No hearing will be allowed in connection with administrative review of an initial denial of access.

(g) The Privacy Appeals Officer shall act upon the appeal and issue a final determination in writing not later than thirty days (excluding Saturdays, Sundays and holidays) from the date on which the appeal is received; provided, that the Privacy Appeals officer may extend the thirty days upon deciding that a fair and equitable review cannot be made within that period, but only if the individual is advised in writing of the reason for the extension and the estimated date by which a final determination will issue, which estimated date should not be later than the sixtieth day (excluding Saturdays, Sundays and holidays) after receipt of the appeal unless there exist unusual circumstances, as described in § 16.5(a).

(h) The decision after review will be in writing, will constitute final action of the Department on a request for access, and, if the denial of the request is in whole or part upheld, the Department shall notify the person making the request of his right to judicial review under 5 U.S.C. 552a(g)(1), as amended by 5 U.S.C. 552a(g)(5).

§ 16.8 Request for correction or amendment to record.

(a) Any individual, regardless of age, may submit to the Department a request for correction or amendment of a record pertaining to that individual. The request should be made either in

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person at the office of, or by mail addressed to, the Privacy Act Officer who processed the individual's request for access to the record. Although an oral request may be honored, a requester may be asked to submit his or her request in writing. The envelope containing the request and the letter itself should both clearly indicate that the subject is a **PRIVACY ACT REQUEST FOR CORRECTION OR AMENDMENT**.

(b) When a request for correction or amendment is misdirected by the requester, or not addressed as specified in paragraph (a) of this section, the Department official receiving same shall make reasonable effort to identify, and promptly refer it to, the appropriate Privacy Act Officer and the time of receipt for processing purposes will be the time when it is received by the appropriate official.

(c) When a request for correction or amendment fails to provide necessary information as set forth in paragraph (e) of this section, the requester shall be given reasonable opportunity to answer the request and shall be advised that the time of receipt for processing purposes will be the time when the additional necessary information is received by the appropriate official.

(d) Since the request, in all cases, will follow a request for access under §16.4, the individual's identity will be established by his or her signature on the request.

(e) A request for correction or amendment should include the following:

(1) A specific identification of the record sought to be corrected or amended (for example, description, title, date, paragraph, sentence, line and words);

(2) The specific wording to be deleted, if any;

(3) The specific wording to be inserted or added, if any, and the exact place at which it is to be inserted or added; and

(4) A statement of the basis for the requested correction or amendment, with all available supporting documents and materials which substantiate the statement.

(f) The provisions of §16.3(b) (2) and (3) apply to the information obtained under paragraph (e) of this section.

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§ 16.9 Agency procedures upon request for correction or amendment of record.

(a)(1) Not later than ten days (excluding Saturdays, Sundays and holidays) after receipt of a request to correct or amend a record, the Privacy Act Officer shall send an acknowledgment providing an estimate of time within which action will be taken on the request and asking for such further information as may be necessary to process the request. The estimate of time may take into account unusual circumstances as described in §16.5(a). No acknowledgment will be sent if the request can be reviewed, processed, and the individual notified of the results of review (either compliance or denial) within the ten days. Requests filed in person will be acknowledged at the time submitted.

(2) Promptly after acknowledging receipt of a request, or after receiving such further information as might have been requested, or after arriving at a decision within the time prescribed in §16.9(a)(1), the Privacy Act Officer shall either:

(i) Make the requested correction or amendment and advise the individual in writing of such action, providing either a copy of the corrected or amended record or a statement as to the means whereby the correction or amendment was effected in cases where a copy cannot be provided; or,

(ii) Inform the individual in writing that his or her request is denied and provide the following information:

(A) The Privacy Act Officer's name and title and position;

(B) The date of the denial;

(C) The reasons for the denial, including citation to the appropriate sections of the Act and this part; and,

(D) The procedures for appeal of the denial as set forth in §16.10, including the name and address of the Privacy Appeals Officer. The term *promptly* in this §16.9 means within thirty days (excluding Saturdays, Sundays and holidays). If the Privacy Act Officer cannot make the determination within thirty days, the individual will be advised in writing of the reason therefor and of the estimated date by which the determination will be made.

(b) Whenever an individual's record is corrected or amended pursuant to a request by that individual, the Privacy Act Officer shall see to the notification of all persons and agencies to which the corrected or amended portion of the record had been disclosed prior to its correction or amendment, if an accounting of such disclosure was made as required by the Act. The notification shall require a recipient agency maintaining the record to acknowledge receipt of the notification, to correct or amend the record and to appraise any agency or person to which it had disclosed the record of the substance of the correction or amendment.

(c) The following criteria will be considered by the Privacy Act Officer in reviewing a request for correction or amendment:

(1) The sufficiency of the evidence submitted by the individual;

(2) The factual accuracy of the information;

(3) The relevance and necessity of the information in terms of the purpose for which it was collected;

(4) The timeliness and currency of the information in terms of the purpose for which it was collected;

(5) The completeness of the information in terms of the purpose for which it was collected;

(6) The possibility that denial of the request could unfairly result in determinations adverse to the individual;

(7) The character of the record sought to be corrected or amended; and

(8) The propriety and feasibility of complying with the specific means of correction or amendment requested by the individual.

(d) The Department will not undertake to gather evidence for the individual, but does reserve the right to verify the evidence which the individual submits.

(e) Correction or amendment of a record requested by an individual will be denied only upon a determination by the Privacy Act Officer that:

(1) There has been a failure to establish, by the evidence presented, the propriety of the correction or amendment in light of the criteria set forth in paragraph (c) of this section;

(2) The record sought to be corrected or amended was compiled in a termi-

nated judicial, quasi-judicial, legislative or quasi-legislative proceeding to which the individual was a party or participant;

(3) The information in the record sought to be corrected or amended, or the record sought to be corrected or amended, is the subject of a pending judicial, quasi-judicial or quasi-legislative proceeding to which the individual is a party or participant;

(4) The correction or amendment would violate a duly enacted statute or promulgated regulation; or,

(5) The individual unreasonably has failed to comply with the procedural requirements of this part.

(f) If a request is partially granted and partially denied, the Privacy Act Officer shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

§ 16.10 Appeal of initial adverse agency determination on correction or amendment.

(a) Appeal shall be available only from a written denial of a request for correction or amendment of a record issued under § 16.9, and only if a written appeal is filed within thirty calendar days after the issuance of the written denial.

(b) Each appeal shall be addressed to the Privacy Appeals Officer identified in the written denial. The envelope containing the appeal and the letter itself should both clearly indicate that the subject is PRIVACY ACT APPEAL.

(c) When an appeal is misdirected by the requester, or not addressed as specified in paragraph (b) of this section, the Department official receiving same shall promptly refer it to the appropriate Privacy Appeals Officer and the time of receipt for processing purposes will be the time when it is received by the appropriate official.

(d) When an appeal fails to provide the necessary information as set forth in paragraph (e) of this section, the requester shall be advised that the time for receipt for processing purposes will be the time when the additional necessary information is received by the appropriate official.

(e) The individual's appeal papers shall include the following: A copy of

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the original request for correction or amendment; a copy of the initial denial; and a statement of the reasons why the initial denial is believed to be in error. The appeal shall be signed by the individual. The record which the individual requests be corrected or amended will be supplied by the Privacy Act Officer who issued the initial denial. While the foregoing normally will comprise the entire record on appeal, the Privacy Appeals Officer may seek additional information necessary to assure that the final determination is fair and equitable and, in such instances, the additional information will be disclosed to the individual to the greatest extent possible and an opportunity provided for comment thereon.

(f) No hearing on appeal will be allowed.

(g) The Privacy Appeals Officer shall act upon the appeal and issue a final Department determination in writing not later than thirty days (excluding Saturdays, Sundays and holidays) from the date on which the appeal is received; provided, that the Privacy Appeals Officer may extend the thirty days upon deciding that a fair and equitable review cannot be made within that period, but only if the individual is advised in writing of the reason for the extension and the estimated date by which a final determination will issue (which estimated date should not be later than the sixtieth day (excluding Saturdays, Sundays and holidays) after receipt of the appeal unless unusual circumstances, as described in §16.5(a), are met).

(h) If the appeal is determined in favor of the individual, the final determination shall include the specific corrections or amendments to be made and a copy thereof shall be transmitted promptly both to the individual and to the Privacy Act Officer who issued the initial denial. Upon receipt of such final determination, the Privacy Act Officer promptly shall take the actions set forth in §16.9(a)(2)(i) and §16.9(b).

(i) If the appeal is denied, the final determination shall be transmitted promptly to the individual and shall state the reasons for the denial. The notice of final determination also shall

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inform the individual of the following information:

(1) The right of the individual to file a concise statement of reasons for disagreeing with the final determination. The statement ordinarily should not exceed one page and the Department reserves the right to reject a statement of excessive length. Such a statement shall be filed with the Privacy Appeals Officer. It should identify the date of the final determination and be signed by the individual. The Privacy Appeals Officer shall acknowledge receipt of such statement and inform the individual of the date on which it was received;

(2) The fact that any such disagreement statement filed by the individual will be noted in the disputed record and that a copy of the statement will be provided to persons and agencies to which the record is disclosed subsequent to the date of receipt of such statement;

(3) The fact that prior recipients of the disputed record will be provided a copy of any statement of the dispute to the extent that an accounting of disclosures, as required by the Act, was made;

(4) The fact that the Department will append to any such disagreement statement filed by the individual, a copy of the final determination or summary thereof which also will be provided to persons and agencies to which the disagreement statement is disclosed; and,

(5) The right of the individual to judicial review of the final determination under 5 U.S.C. 552a(g)(1)(A), as limited by 5 U.S.C. 552a(g)(5).

(j) In making the final determination, the Privacy Appeals Officer shall employ the criteria set forth in paragraph 16.9(c) and shall deny an appeal only on the grounds set forth in §16.9(e).

(k) If an appeal is partially granted and partially denied, the Privacy Appeals Officer shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

(l) Although a copy of the final determination or a summary thereof will be treated as part of the individual's record for purposes of disclosure in instances where the individual has filed a

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disagreement statement, it will not be subject to correction or amendment by the individual.

(m) The provisions of § 16.3(b) (2) and (3) apply to the information obtained under paragraphs (e) and (i)(1) of this section.

§ 16.11 Disclosure of record to person other than the individual to whom it pertains.

(a) The Department may disclose a record pertaining to an individual to a person other than the individual only in the following instances:

(1) Upon written request by the individual, including authorization under § 16.5(e);

(2) With the prior written consent of the individual;

(3) To a parent or legal guardian under 5 U.S.C. 552a(h); and,

(4) When required by the Act and not covered explicitly by the provisions of 5 U.S.C. 552a(b); and,

(5) When permitted under 5 U.S.C. 552a(b) (1) through (11), which read as follows:

(1) To those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) Required under section 552 of this title;

(3) For a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law en-

forcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(11) Pursuant to the order of a court of competent jurisdiction.

(b) The situations referred to in paragraph (a)(4) of this section include the following:

(1) 5 U.S.C. 552a(c)(4) requires dissemination of a corrected or amended record or notation of a disagreement statement by the Department in certain circumstances;

(2) 5 U.S.C. 552(a)(g) authorizes civil action by an individual and requires disclosure by the Department or the court;

(3) Section 5(e)(2) of the Act authorizes release of any records or information by the Department to the Privacy Protection Study Commission upon request of the Chairman; and

(4) Section 6 of the Act authorizes the Office of Management and Budget to provide the Department with continuing oversight and assistance in implementation of the Act.

(c) The Department shall make an accounting of each disclosure of any record contained in a system of records in accordance with 5 U.S.C. 552a(c) (1) and (2). Except for a disclosure made under 5 U.S.C. 552a(b)(7), the Privacy Act Officer shall make such accounting available to any individual, insofar as it pertains to that individual, on request submitted in accordance with § 16.4. The Privacy Act Officer shall make reasonable efforts to notify any individual when any record in a system of records is disclosed to any person under compulsory legal process, promptly upon being informed that such process has become a matter of public record.

§ 16.12**§ 16.12 Fees.**

(a) The only fees to be charged to or collected from an individual under the provisions of this part are for copying records at the request of the individual.

(1) No fees shall be charged or collected for the following: Search for and retrieval of the records; review of the records; copying at the initiative of the Department without a request from the individual; transportation of records and personnel; and first class postage.

(2) It is the policy of the Department to provide an individual with one copy of each record corrected or amended pursuant to his or her request without charge as evidence of the correction or amendment.

(3) As requested by the United States Civil Service Commission in its published regulations implementing the Act, the Department will charge no fee to an individual who requests copies of a personnel record covered by that Commission's Government-wide published notice of systems of records. However, when such records are voluminous and the cost of copying would be in excess of five dollars (\$5) the Department may, in its discretion, charge a fee.

(b) The copying fees prescribed by paragraph (a) of this section are:

\$0.10 Each copy of each page, up to 8 1/2" x 14" made by photocopy or similar process.

\$0.20 Each page of computer printout without regard to the number of carbon copies concurrently printed.

(c) Payment of fees under this section shall be made in cash, or preferably by check or money order payable to the "Treasurer of the United States." Payment shall be delivered or sent to the office stated in the billing notice or, if none is stated, to the Privacy Act Officer processing the request. Payment may be required in the form of a certified check in appropriate circumstances. Postage stamps will not be accepted.

(d) A copying fee totaling \$1 or less shall be waived, but the copying fees for contemporaneous requests by the same individual shall be aggregated to determine the total fee. A copying fee shall not be charged or collected, or alternatively, it may be reduced when

such action is determined by the Privacy Act Officer to be in the public interest.

(e) Special and additional services provided at the request of the individual, such as certification or authentication, postal insurance and special mailing arrangement costs, will be charged to the individual in accordance with other published regulations of the Department pursuant to statute (for example, 31 U.S.C. 433a).

(f) This section applies only to individuals making requests under this part. All other persons shall remain subject to fees and charges prescribed by other and appropriate authorities.

[40 FR 39729, Aug. 28, 1975, as amended at 42 FR 29479, June 9, 1977]

§ 16.13 Penalties.

(a) The Act provides, in pertinent part:

Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretences shall be guilty of a misdemeanor and fined not more than \$5,000. (5 U.S.C. 552a(i)(3))

(b) A person who falsely or fraudulently attempts to obtain records under the Act may also be subject to prosecution under such other criminal statutes as 18 U.S.C. 494, 495 and 1001.

§ 16.14 General exemptions.

(a) Individuals may not have access to records maintained by the Department but which were provided by another agency which has determined by regulation that such information is subject to general exemption under 5 U.S.C. 552a(j). If such exempt records are within a request for access, the Department will advise the individual of their existence and of the name and address of the source agency. For any further information concerning the record and the exemption, the individual must contact that source agency.

(b) The Secretary of Housing and Urban Development has determined that the Office of the Assistant Inspector General for Investigation performs, as its principal function, activities pertaining to the enforcement of criminal laws. The records maintained by that office in a system identified as "HUD/

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DEPT-24, Investigation Files,” primarily consist of information compiled for the purpose of criminal investigations and are associated with identifiable individuals. Therefore, the Secretary has determined that this system of records shall be exempt, consistent with 5 U.S.C. 552a(j)(2), from all requirements of the Privacy Act except 5 U.S.C. 552a (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i) unless elsewhere exempted.

[40 FR 39729, Aug. 28, 1975, as amended at 49 FR 20486, May 15, 1984]

§ 16.15 Specific exemptions.

Whenever the Secretary of Housing and Urban Development determines it to be necessary and proper, with respect to any system of records maintained by the Department, to exercise the right to promulgate rules to exempt such systems in accordance with the provisions of 5 U.S.C. 552a(k), each specific exemption, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justification for each exemption shall be published in the FEDERAL REGISTER as part of the Department's Notice of Systems of Records.

(a) Exempt under 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), (I), and (f). This exemption allows the Department to withhold records compiled for law enforcement purposes. The reasons for adopting this exemption are to prevent individuals, who are the subjects of investigation, from frustrating the investigatory process, to ensure the integrity of the investigatory process, to ensure the integrity of law enforcement activities, to prevent disclosure of investigative techniques, and to protect the confidentiality of sources of information. The names of systems correspond to those published in the FEDERAL REGISTER as part of the Department's Notice of Systems of Records.

(1) HUD/DEPT-15. Equal Opportunity Housing Complaints.

(2) HUD/DEPT-24. Investigation Files in the Office of the Inspector General.

(3) HUD/DEPT-25. Legal Action Files.

(b) Exempt under 5 U.S.C. 552(k)(5) from the requirements of 5 U.S.C. 552a

(c)(3), (d), (e)(1), (e)(4), (G), (H), and (I), and (f). This exemption allows the Department to withhold records compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal contracts, or access to classified material. The reasons for adopting this exemption are to insure the proper functioning of the investigatory process, to insure effective determination of suitability, eligibility and qualification for employment and to protect the confidentiality of sources of information. The names of systems correspond to those published in the FEDERAL REGISTER as part of the Department's Notice of Systems of Records.

(1) HUD/DEPT-24. Investigation Files in the Office of the Inspector General.

(2) HUD/DEPT-25. Legal Action Files.

(c) The system of records entitled “HUD/PIH-1. Tenant Eligibility Verification Files” consists in part of investigatory material compiled for law enforcement purposes. Relevant records will be used by appropriate Federal, state or local agencies charged with the responsibility for investigating or prosecuting violations of law. Therefore, to the extent that information in the system falls within the coverage of subsection (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), the system is exempt from the requirements of the following subsections of the Privacy Act, for the reasons stated below.

(1) From subsection (c)(3) because release of an accounting of disclosures to an individual who may be the subject of an investigation could reveal the nature and scope of the investigation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the investigation.

(2) From subsection (d)(1) because release of the records to an individual who may become or has become the subject of an investigation could interfere with pending or prospective law enforcement proceedings, constitute an unwarranted invasion of the personal privacy of third parties, reveal the identity of confidential sources, or reveal sensitive investigative techniques and procedures.

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(3) From subsection (d)(2) because amendment or correction of the records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative burden by requiring the office that maintains the records to continuously retrograde its verifications of tenant eligibility attempting to resolve questions of accuracy, relevance, timeliness and completeness.

(4) From subsection (e)(1) because it is often impossible to determine relevance or necessity of information in pre-investigative early stages. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation. In addition, the Assistant Secretary for Public and Indian Housing, or investigators, may obtain information concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the Assistant Secretary for Public and Indian Housing, or investigators, should retain this information because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining the evidence, information may be provided which relates to matters incidental to the main purpose of the inquiry or investigation but which may be pertinent to the investigative jurisdiction of another agency. Such information cannot readily be identified.

(d) The system of records entitled "HUD/PIH-1. Tenant Eligibility Verification Files" consists in part of material that may be used for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence. Therefore, to the extent that information in this system falls within the coverage of subsection (k)(5) of the Privacy Act, 5 U.S.C. 552a(k)(5), the system is exempt from the requirements of the following subsection of

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the Privacy Act, for the reasons stated below.

(1) From subsection (d)(1) because release would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality. Revealing the identity of a confidential source could impede future cooperation by sources, and could result in harassment or harm to such sources.

[42 FR 49810, Sept. 28, 1977, as amended at 59 FR 9407, Feb. 28, 1994]

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